

Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of Section 73.202(b),) MM Docket No. 97-107
Table of Allotments,) RM-9023
(Potts Camp and Saltillo, Mississippi))

To: The Commission

RESPONSE OF BROADCASTERS & PUBLISHERS, INC.
TO "REQUEST FOR OFFICIAL NOTICE"

On January 15, 1999, Olvie E. Sisk ("Sisk") filed a pleading requesting that the Commission "take official notice of the facts and circumstances appearing in the record of and underlying its Report and Order in MM Docket No. 97-97, (Mt. Juliet, Belle Meade, Tennessee) 12 FCC Rcd. 10481 (1997), in considering Sisk's pending Application for Review, in the above-referenced proceeding."

Sisk's request for official notice is a curious pleading in several respects. First, requests for official notice of FCC decisions are usually limited to the citation of decisions issued after the submission of the pleadings that are authorized to be filed in a particular proceeding. However, Sisk has filed a pleading -- not contemplated by Section 1.115 of the Commission's rules -- to bring to the Commission's attention a decision which was released one year prior to the filing of his Application for Review.

Second, the request for official notice merely underscores the weakness of Sisk's Application for Review because the decision cited clearly does not stand for the proposition

asserted by Sisk, namely, that the Commission gave "primary consideration to economic concerns (the private financial interests of the petitioner in avoiding additional costs) in approving a reallocation which was not supported by any of its relevant reallocation policies."^{1/} In its Report and Order in MM Docket No. 97-97, the Commission concluded that the channel assigned to Mt. Juliet, Tennessee, could not be implemented because "such a facility would also cause EMI [electromagnetic interference] to specific FAA localizers and would not be consistent with local zoning requirements." 12 FCC Rec. at 10483. With respect to the zoning issue, the Commission relied on a letter from "a local law firm with previous experience regarding the location of radio towers in middle Tennessee," which concluded that there "are no zoning specifications in existence that would permit the construction of a 100-meter tower and that there is 'highly unlikely' that a specific height variance could be obtained within the geographic limits of Mt. Juliet." Id. Thus, the Commission's decision to approve the reallocation was not primarily based on concern for "the private financial interests of the petitioner in avoiding additional costs."^{2/} To the contrary, the Commission found that no site was available that would receive zoning approval and comply with EMI requirements.

If the Commission were to take official notice of an FCC proceeding, it should note its issuance on January 15, 1999, of a Notice of Proposed Rule Making which proposes to allot

^{1/} In Change of Community Report & Order, 4 FCC Rcd. 4870 (1989), the Commission stated that "adherence to the allotment criteria will ensure that any exchange involving a change in the community of license will be made in the public interest and not solely in the financial interests of the participants."

^{2/} Unlike the situation posed by Sisk's Application for Review which involves a station which is on the air, the MM Docket No. 97-97 proceeding involved a station which had terminated operation as a result of a complaint of interference to air navigation.

Channel 275C3 to Saltillo, Mississippi. Simultaneous with the submission of this Response, BPI is filing Comments in support of the proposed allotment which reconfirms its commitment to build and operate the proposed Channel 275C3 facility. If the Commission's proposal were adopted, Saltillo would receive a first aural transmission service and residents of Potts Camp would continue to enjoy its only local aural service. By contrast, a grant of Sisk's Application for Review would result in 49,293 persons losing service from Station WCNA(FM) and the community of Potts Camp being deprived of their only local full-time aural service -- surely such a result would patently disserve the public interest.

Respectfully submitted,

BROADCASTERS AND PUBLISHERS, INC.

By 
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January 25, 1999

CERTIFICATE OF SERVICE

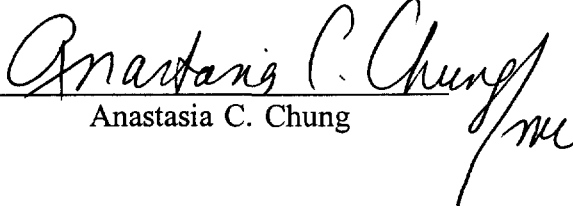
I, Anastasia C. Chung, a secretary in the law firm of Verner, Liipfert, Bernhard, McPherson and Hand, Chartered, do hereby certify that the foregoing "Comments of Broadcasters and Publishers, Inc." was mailed first-class, postage prepaid, this 25th day of January, 1999, to the following:

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